

1 ALANA W. ROBINSON  
2 Acting United States Attorney  
3 VALERIE H. CHU  
4 California Bar No. 241709  
5 Assistant U.S. Attorney  
Federal Office Building  
880 Front Street, Room 6293  
San Diego, CA 92101-8893  
Tel.: (619) 546-6750  
Email: Valerie.chu@usdoj.gov

6 Attorneys for United States of America

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA

10 v.

11 HOOTAN MELAMED (1),  
12 JEAN FRANCOIS PICARD (2),  
13 JOHN PANGELINAN (3),  
14 PHONG HUNG TRAN (4),

15 Defendants.

16 } No. 16CR1409-H  
} JOINT MOTION TO (1) CONTINUE  
} MOTION HEARING AND (2)  
} EXCLUDE TIME UNDER THE  
} SPEEDY TRIAL ACT

17 } Date: August 28th, 2017  
18 } Time: 2:00 p.m.

19 The captioned parties jointly move to continue the motion hearing currently set for  
20 August 28<sup>th</sup>, 2017 at 2:00 p.m. to November 20<sup>th</sup>, 2017 at 2:00 p.m., and to exclude time  
21 under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(7). In support, the parties  
submit as follows:

22 1. On June 16, 2016, a federal grand jury returned a 14-count indictment  
23 charging the defendants with conspiracy, honest services mail fraud, violations of the  
Travel Act, and criminal forfeiture, in connection with an alleged \$34 million kickback  
24 and bribery scheme through which service providers paid bribes and kickbacks to doctors  
25 to write prescriptions for compound creams or make referrals for durable medical  
26 equipment, and then to submit them to specific pharmacies and companies to be filled.

1       2. The defendants made their initial appearances and were arraigned on the  
 2 indictment in the Southern District of California on June 28, 2016. The Speedy Trial Act,  
 3 18 U.S.C. § 3161(c)(1), requires trial to commence within 70 days from that date.  
 4 Section 3161(h) excludes certain periods of time in calculating the 70 days, including  
 5 delay resulting from a continuance if the court finds “the ends of justice served by taking  
 6 such action outweigh the best interest of the public and the defendant in a speedy trial.”  
 7 18 U.S.C. § 3161(h)(7)(A). The court must “set[] forth . . . either orally or in writing, its  
 8 reasons” for the finding. *Id.* The court “shall consider” the following factors, “among  
 9 others”:

10                     (i) Whether the failure to grant such a continuance in the proceeding  
 11 would be likely to make a continuation of such proceeding impossible, or  
 result in a miscarriage of justice.

12                     (ii) Whether the case is so unusual or so complex, due to the number of  
 13 defendants, the nature of the prosecution, or the existence of novel  
 14 questions of fact or law, that it is unreasonable to expect adequate  
 preparation for pretrial proceedings or for the trial itself within the time  
 limits established by this section.

15                     ...  
 16                     (iv) Whether the failure to grant such a continuance in a case which,  
 17 taken as a whole, is not so unusual or so complex as to fall within clause  
 18 (ii), would deny the defendant reasonable time to obtain counsel, would  
 19 unreasonably deny the defendant or the Government continuity of  
 counsel, or would deny counsel for the defendant or the attorney for the  
 Government the reasonable time necessary for effective preparation,  
 taking into account the existence of due diligence.

20 U.S.C. § 3161(h)(7)(B). “No continuance under [this provision] shall be granted because  
 21 of general congestion of the court’s calendar, or lack of diligent preparation or failure to  
 22 obtain available witnesses on the part of the attorney for the Government.” U.S.C. §  
 23 3161(h)(7)(C).

24       3. The parties agree that the ends of justice served by granting the requested  
 25 continuance outweigh the best interest of the public and the defendants in a speedy trial,  
 26 for the following reasons:  
 27  
 28

a. According to the indictment, the alleged scheme involved years' worth of medical treatments, millions of dollars in bills, thousands of dollars in corrupt payments, and hundreds of patients.

b. Because the claims involve patient identities, medical treatment, and billing records, the discovery in this case is sensitive. The Court issued a protective order on July 18, 2016.

c. The discovery consists of thousands of pages of bank records, agent reports, and subpoenaed documents, as well as hundreds of audio recordings ranging in duration from a few minutes to over an hour.

d. Given the volume of discovery and the need to protect and limit its disclosure, the defense needs time to review the material before they can file and litigate pretrial motions and provide an estimate of trial length.

e. To assist the parties in evaluating the discovery, the United States has offered to meet with defense counsel. Those meetings are being scheduled and have not yet occurred.

4. Accordingly, the parties request a continuance of the motion hearing until August 28, 2017.

5. The parties have exercised due diligence. The parties submit that the amount of discovery and the nature of the charges make it unreasonable to expect adequate preparation for pretrial proceedings or the trial itself within the time limits established by the Speedy Trial Act. The parties further submit that the failure to grant the requested continuance would deny counsel the reasonable time necessary for effective preparation and result in a miscarriage of justice.

6. Defendants are all currently out of custody.

7. Counsel for defendants represent that they have discussed the need for this continuance with their respective clients, and that each defendant agrees to and joins in the request for this continuance.

8. The parties therefore jointly move for a continuance and to exclude time under the Speedy Trial Act. The parties agree the period of delay excluded spans from the filing of this joint motion until the new date for the hearing pursuant to U.S.C. § 3161(h)(1)(D) and (h)(7)(A); specifically, that the time between August 28, 2017 and November 20<sup>th</sup>, 2017 shall be excluded.

**SO STIPULATED AND AGREED.**

s/ Valerie H. Chu  
VALERIE H. CHU  
Assistant United States Attorney

s/Steven Goldsobel (w/authorization)  
STEVEN GOLDSOBEL  
Counsel for Hootan Melamed (Def 1)

s/GERALD Werksman (w/authorization)  
GERALD WERKSMAN  
Counsel for Jean Francois Picard (Def 2)

s/Patrick Q. Hall (w/authorization)  
PATRICK Q. HALL  
Counsel for John Pangelinan (Def 3)

s/Thomas Warwick (w/authorization)  
THOMAS WARWICK  
Counsel for Phong Tran (Def 4)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ) No. 16cr1409-H  
Plaintiff, ) CERTIFICATE OF SERVICE  
v. )  
HOOTAN MELAMED (1), )  
JEAN FRANCOIS PICARD (2), )  
JOHN PANGELINAN (3), )  
PHONG HUNG TRAN (4), )  
Defendants. )

**IT IS HEREBY CERTIFIED THAT:**

I, Valerie H Chu, am a citizen of the United States and am at least 18 years of age. My business address is 880 Front Street, San Diego, California 92101-8893.

I am not a party to this case. I have caused service of the attached Joint Motion on the parties to this case by filing the foregoing with the Clerk of the District Court using its ECF system, which electronically notifies them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 23rd, 2017

s/ Valerie H. Chu  
VALERIE H. CHU